



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA,

Plaintiff,-

v.

CDMG REALTY CO., a
limited partnership;
THE ESTATE OF HELEN E. RINGLIEB,
individually, and as general
partner in CDMG REALTY CO.;
HMAT ASSOCIATES, INC.;
TOWNSHIP OF PARSIPPANY-TROY HILLS;
ALLIED-SIGNAL, INC.;
BEAZER MATERIALS & SERVICES, INC.;
CIBA-GEIGY CORPORATION;
HOECHST CELANESE CORP.;
OCCIDENTAL CHEMICAL CORP.;
PFIZER, INC.;
CARL GULICK, INC.;

Defendants.

CIVIL ACTION NOS.

89-4246 (NHP) and
89-4281 (DRD)

Hon. Nicholas H. Politan
U.S. District Court Judge

Hon. Ronald J. Hedges
U.S. Magistrate Judge

ORIGINAL FILED

JAN 28 1999

WILLIAM T. WALSH, CLERK

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Plaintiff,

v.

CIBA-GEIGY CORPORATION, INC.;
CURTISS-WRIGHT CORPORATION;
KETCHAM AND MC DOUGALL, INC.;
PFIZER, INC.; OCCIDENTAL
CHEMICAL CORPORATION;
KOPPERS COMPANY, INC.;
SHARKEY FARMS, INC.;
NICHOLAS ENTERPRISES INC.;
PARKER CHEMICAL COMPANY;
CHEMICAL WASTE
MANAGEMENT, INC.;

Defendants.

ENTERED

on
THE DOCKET
on 1/28/99
WILLIAM T. WALSH, CLERK
By *[Signature]*
(Deputy Clerk)

CONSENT DECREE

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency (as defined below, "EPA"), filed a complaint in this matter on October 13, 1989 ("Complaint") pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (as defined below, "CERCLA"), 42 U.S.C. §§ 9607, 9613. Subsequently, the Complaint was deemed amended to request relief pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

B. The State of New Jersey ("State") also filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and N.J.S.A. Sections 13:1D-9, 13:1E-3, 58:10(A), and 58:10. The action filed by the State was later consolidated with the United States' action by Order dated June 12, 1990.

C. In this consolidated action the United States and the State sought, *inter alia*: (1) reimbursement of costs (including interest) incurred by the United States and the State for response actions at the Sharkey Landfill Superfund Site (as defined below, "Site") in Morris County, New Jersey; (2) declaratory judgment as to the liability of named defendants for the contamination at the Site; and (3) design, implementation, operation, and maintenance of a remedy at the Site, including monitoring programs.

D. On July 31, 1991, certain defendants in this action filed a third-party complaint against numerous third-party defendants. This third-party action was styled Beazer Materials & Services, Inc., et al. v. Adron, Inc., et al.

E. By Order dated April 26, 1994, the Court directed that the Complaint be amended to realign certain third-party defendants as direct defendants, and to add additional parties as direct defendants. On the same date, the Court granted

a motion to amend the caption of the third-party complaint.

F. On December 2, 1994, this Court entered a consent decree (as defined below, "Original Consent Decree"), whereby all the defendants, except CDMG Realty Co. and Helen E. Ringlieb, settled their liability and agreed, *inter alia*: (1) to reimburse certain response costs incurred by the United States and the State at the Site and (2) to design, implement, operate and maintain a remedy at the Site.

G. On May 5, 1995, the Court granted the United States leave to amend its complaint to name Helen E. Ringlieb individually liable as a former owner under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607 (a)(2). By Order dated March 7, 1997, the Court ordered that the estate of Helen E. Ringlieb, and Mary Woytisek and Dennis M. Ringlieb, co-executors of the estate (collectively, "Estate"), be substituted as parties in place of Defendant Helen E. Ringlieb.

H. The State, never having brought suit against CDMG Realty Co. or Helen E. Ringlieb or the Estate, is not a party to this consent decree (as defined below, "Consent Decree").

I. CDMG Realty Co. and the Estate ("Settling Defendants") desire to settle this matter with the United States.

J. By entering into this Consent Decree, the Settling Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

K. The United States and the Settling Defendants (collectively, "Parties") recognize, and the Court finds, that this Consent Decree has been negotiated by the Parties in good faith; that the implementation of this Consent Decree will obviate the need for prolonged and complicated litigation between the Parties; and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the Complaint, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon the Settling Defendants and their successors and assigns. Any change in ownership or corporate, partnership or other organizational status of a Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all Appendices attached hereto (listed in Section XV). In the event of conflict between this Decree and any Appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and any successor departments or agencies of the United States.

"Explanation of Significant Differences" shall mean the Explanation of Significant Differences issued on October 4, 1993 that explains and clarifies the Record of Decision, and is set forth as part of Appendix A to the Original Consent Decree.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Institutional Controls" shall mean land and/or water use restrictions which may include, but need not be limited to, restrictions in the form of contractual agreements, restrictive easements/covenants that run with the land and governmental controls.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

"Original Consent Decree" shall mean the Decree, attached hereto as Appendix A, and entered by the Court on December 2, 1994, between the United States, the State of New Jersey, and the Original Settling Defendants concerning performance of the Work and reimbursement of certain Response Costs, and all Attachments and Appendices thereto.

"Operation and Maintenance" shall mean all activities required to maintain the effectiveness of the Remedial Action, as set forth more particularly in the Original Consent Decree.

"Original Settling Defendants" shall mean the defendants that entered into the Original Consent Decree with the United States and State of New Jersey and that are listed in Appendices D, E and F of the Original Consent Decree.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" shall mean the EPA Record of Decision relating to the Site signed on September 29, 1986 by the Regional Administrator, EPA Region II, and all Attachments thereto, as set forth as part of Appendix A to the Original Consent Decree.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Original Settling Defendants to implement the Record of Decision, as set forth more particularly in the Original Consent Decree.

"Remedial Design" shall mean those activities to be undertaken by the Original Settling Defendants to develop the final plans and specifications for

the Remedial Action, as set forth more particularly in the Original Consent Decree.

"Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and DOJ on behalf of EPA have incurred and paid, and will continue to incur and pay, in connection with the Site, plus accrued Interest on all such costs.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean CDMG Realty and the Estate of Helen Ringlieb, and Mary Woytisek and Dennis M. Ringlieb, co-executors of the Estate.

"Site" shall mean the Sharkey Farms Landfill Superfund site, encompassing approximately 90 acres of irregularly shaped, disconnected areas, located at Parsippany-Troy Hill and East Hanover in Morris County, New Jersey, also known as Block 765, Lots 81, 88 and 89; Block 768, Lots 1, 2 and 3; Block 769, Lot 1; Block 770, Lot 7 and Block 771, Lot 1 in Parsippany-Troy Hills Township and Block 5, Lots 1 and 2 in East Hanover Township, County of Morris, State of New Jersey, and depicted generally on the map attached hereto as Appendix B.

"Statement of Work" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to the Original Consent Decree and any modifications made in accordance with the Original Consent Decree.

"Subparagraph" shall mean a portion of this Consent Decree identified by a lower case letter.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under

Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities the Original Settling Defendants are required to perform under the Original Consent Decree, except those required by Section XXX (Retention of Records) thereof.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Within thirty (30) days of the effective date of this Consent Decree, the Settling Defendants shall:

a. Payment. Pay to the United States \$60,000, plus any interest accrued thereon following the Settling Defendants' deposit of the \$60,000 in an interest-bearing account on May 27, 1998, in reimbursement of Response Costs, by Electronic Funds Transfer ("EFT") to the DOJ account in accordance with current EFT procedures, referencing the Site's CERCLA ID Number NJD 980-505-762 and DOJ Case Number 90-11-2-470. Payment shall be made in accordance with instructions obtained by the Settling Defendants from the Financial Litigation Unit of the Office of the United States Attorney for the District of New Jersey. Any EFT received at the DOJ account after 4:00 P.M. (Eastern Time) will be credited on the next business day.

b. The Settling Defendants also shall send copies of the EFT required by Subparagraph 4.a. to the United States as specified in Section XII (Notices And Submissions).

c. Interest on Late Payments. In the event that the payment required by Subparagraph 4.a. is not made when due, Interest shall accrue on the unpaid balance from the effective date of this Consent Decree through the date of payment. In the event that the payment to be made by the Settling Defendants pursuant to Subparagraph 4.a. is not received by the United States when due, neither the Covenants Not To Sue By The United States provided by Section VI of

this Consent Decree nor the Contribution Protection provided by Section VIII of this Consent Decree shall be effective unless and until the United States receives the full payment required by Subparagraph 4.a., with Interest as provided for in this Subparagraph.

d. Stipulated Penalty. If any amount due to the United State from the Settling Defendants under this Consent Decree is not paid by the required date, the Settling Defendants shall pay as a stipulated penalty, in addition to the Interest required by Subparagraph 4.c., \$1,000 (one thousand dollars) per day that such payment is late. Stipulated Penalties are due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties. All payments to the United States under this Subparagraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund", and shall be mailed to:

EPA - Region II
Attention: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

and shall reference EPA Site No. NJD 980-505-762 and DOJ Case No. 90-11-2-470. Proof of any payment made pursuant to this Subparagraph shall be sent to the United States as provided in Section XII (Notices And Submissions). Stipulated Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand.

e. If the United States must bring an action to collect any payment required by this Consent Decree, the Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

f. Payment of Stipulated Penalties under Subparagraph 4.d. shall be in addition to any other remedies or sanctions available to the United States by virtue of the Settling Defendants' failure to make timely payment required by this Consent Decree.

VI. COVENANT NOT TO SUE BY THE UNITED STATES

5. Covenant Not to Sue. In consideration of the payment that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in this Paragraph and Paragraphs 6, 7, 9, 10 and 11, the United States covenants not to sue or to take administrative action against the Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for recovery of Response Costs. Except with respect to future liability, these covenants shall take effect upon the effective date of this Consent Decree, but shall be conditioned upon the United States having received all payments as provided for in Section V of this Consent Decree. With respect to future liability, these covenants shall take effect upon Certification of Completion of the Remedial Action by EPA ("Certification of Completion"), as set forth more particularly in the Original Consent Decree. These covenants are conditioned upon the complete and satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants extend only to the Settling Defendants and do not extend to any other person.

6. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel the Settling Defendants:

(1) to perform response actions at the Site, or

(2) to reimburse the United States for additional costs of response actions, if, prior to Certification of Completion:

(i) conditions at the Site previously unknown to EPA are discovered, or

(ii) information previously unknown to EPA, in whole or in part, is received,

and EPA determines, based on these previously unknown conditions or this previously unknown information, together with any other relevant information, that the Remedial Action is not protective of human health or the environment. An action or proceeding based on information that is received or conditions that are discovered prior to Certification of Completion may be instituted at any time, including after Certification of Completion.

7. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel the Settling Defendants:

(1) to perform response actions at the Site, or

(2) to reimburse the United States for additional costs of response actions, if, subsequent to Certification of Completion:

(i) conditions at the Site previously unknown to EPA are discovered, or

(ii) information previously unknown to EPA, in whole or in part, is received,

and EPA determines, based on these previously unknown conditions or this previously unknown information, together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

8. For purposes of Paragraph 6 of this Consent Decree, the information and

the conditions previously known to EPA shall include only that information and those conditions as of the entry of this Consent Decree set forth: (1) in the Record of Decision and the Explanation of Significant Differences; and (2) in the Administrative Record supporting the Record of Decision and the Explanation of Significant Differences. For purposes of Paragraph 7 of this Consent Decree, the information and the conditions previously known to EPA shall include only that information and those conditions as of the Certificate of Completion set forth: (1) in the Record of Decision and the Explanation of Significant Differences; (2) in the Administrative Record supporting the Record of Decision and the Explanation of Significant Differences; and (3) in the Administrative Record for the Site maintained by EPA following issuance of the Record of Decision and the Explanation of Significant Differences but prior to issuance of the Certification of Completion.

9. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraph 5. The United States reserves, and this Consent Decree is without prejudice to all rights against the Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by the Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss;

(4) liability for response costs that have been or may be incurred by any federal agencies other than EPA or DOJ on behalf of EPA;

- (5) criminal liability;
- (6) liability, if any, for any violations of law other than the alleged violations resolved in this Consent Decree; and
- (7) liability for future disposal, release or threat of release of Waste Material at the Site.

VII. COVENANTS BY THE SETTLING DEFENDANTS

10. Covenant Not to Sue. The Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, this Consent Decree or the Original Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

- b. any claims against the United States, including any department, agency or instrumentality of the United States, under CERCLA Sections 107 or 113 related to the Site;

- c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities, implementation of Institutional Controls or approval of plans for such activities;

- d. Any claims under the United States Constitution; the Tucker Act, 28 U.S.C. § 1491; federal law; or common law; or

- e. Any claims for costs, fees or expenses incurred in this action or related to the Site including claims under 28 U.S.C. § 2412, as amended.

11. Financial Information Certification. Each Settling Defendant certifies

that the financial information submitted to the United States in support of this settlement is true and correct. In the event that the financial information submitted to the United States failed to disclose any material asset, the transfer of any material property, or is otherwise false in any material way, then: (a) the United States' covenants set forth in Section VI (Covenant Not To Sue By The United States) of this Consent Decree shall be null and void, and the United States shall be free to pursue its claims against the Settling Defendants, including specifically those set out in the Complaint, notwithstanding any statute of limitations that would otherwise bar such claim; and (b) the United States may pursue all remedies available to it under law, civilly or criminally, notwithstanding any statute of limitations that would bar such remedy.

12. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

VIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

13. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a party to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party to this Consent Decree.

14. The Parties agree, and by entering this Consent Decree this Court

finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The matters addressed in this Consent Decree are Response Costs.

15. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

16. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify the United States in writing within 10 days of service of the complaint on them. In addition, the Settling Defendants shall notify the United States within 10 days of service or receipt of any motion for summary judgment and within 10 days of receipt of any order from a court setting a case for trial.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the Site, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants set forth in Section VI (Covenants Not To Sue By The United States).

IX. ACCESS AND INSTITUTIONAL CONTROLS

18. a. Commencing upon the date of the EPA Regional Administrator's signature on this Consent Decree, the Settling Defendants agree to provide the United States, the State, the Original Settling Defendants and their representatives, including EPA, NJDEP, and their contractors, with access at all reasonable times to the Site and any other property to which access is required to implement this Consent Decree, the Original Consent Decree, the Statement of Work, or the remedy selected in the Record of Decision, to the extent that the property is owned by, or access to the property is controlled by, any of the Settling Defendants, for the purpose of conducting any activity related to this Consent Decree or the Original Consent Decree including, but not limited to, the following activities:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States or the State;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Implementing the Work pursuant to the Original Consent Decree;
- vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Defendants or the Original Settling Defendants, or their agents or representatives, consistent with Section X (Access to Information);

viii. Assessing the Settling Defendants' compliance with this Consent Decree or the Original Settling Defendants' compliance with the Original Consent Decree; and

ix. Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by Paragraph 27 of the Original Consent Decree or the Institutional Controls established pursuant to this Consent Decree.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Settling Defendants to which access is needed to implement this Consent Decree, the Original Consent Decree, the Statement of Work, or the remedy selected in the Record of Decision, for each parcel of property such Settling Defendants shall record in the Recorder's Office, Registry of Deeds or other appropriate land records office, of Morris County, New Jersey, access easements that grant to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the Original Settling Defendants, and their

representatives, or

- iv. other appropriate grantees,

a right of access, running with the land, for the purpose of conducting any activity related to this Consent Decree or the Original Consent Decree including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. The Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. draft access easements that are enforceable under the laws

of the State of New Jersey, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with DOJ Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of such easements, the Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easements with the Recorder's Office, Registry of Deeds or other appropriate land records office of Morris County, New Jersey. Within 30 days of filing the easements, the Settling Defendants shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded easements showing the clerk's recording stamps.

19. a. Commencing upon the date of the EPA Regional Administrator's signature on this Consent Decree, the Settling Defendants also agree to refrain from using the Site (or any other property affected by the remedy selected in the ROD) in any manner, or engaging in any other activities, that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to the Original Consent Decree.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Settling Defendants, at which Institutional Controls are needed, each such Settling Defendant shall 1) grant to one or more of the following persons or entities, as directed by EPA:

i. the United States, on behalf of EPA, and its representatives,

the State and its representatives,

iii. the Original Settling Defendants, and their
representatives, or

iv. other appropriate grantees,

and 2) record in the Recorder's Office, Registry of Deeds or other appropriate land records office of Morris County, New Jersey, Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions established by Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to the Original Consent Decree. The Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

i. draft deed restrictions that are enforceable under the laws of the State of New Jersey, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with DOJ Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970).

Within 15 days of EPA's approval and acceptance of such deed restrictions, the Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the deed restrictions with the Recorder's Office, Registry of Deeds or other appropriate office of Morris County, New Jersey. Within 30 days of filing the deed restrictions, the Settling Defendants shall provide EPA with a title insurance policy or other final title evidence

acceptable under the Standards, and a certified copy of the original recorded deed restrictions showing the clerk's recording stamps.

20. If EPA determines that land and/or water use restrictions in the form of state or local laws, regulations, ordinances or other governmental action are needed to implement the remedy selected in the Record of Decision, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

21. Notice to Successors-in-Title

a. With respect to any property owned or controlled by the Settling Defendants that is located within the Site, if EPA requests, the Settling Defendants shall submit to EPA for review and approval a notice to be filed with the Office of County Clerk for Morris County, New Jersey, which shall provide notice to all successors-in-title that the property is located at the Site; that EPA selected a remedy for the Site on September 19, 1986, as explained and clarified by the Explanation of Significant Differences on October 4, 1994; that the Original Consent Decree requiring the implementation of the remedy by, and recovery of certain Response Costs from, potentially responsible parties was approved by the United States District Court for the District of New Jersey, pursuant to Civil Action Numbers 89-4246 (NHP) and 89-4281 (DRD); and that this Consent Decree providing for the recovery of \$60,000 in Response Costs was approved by the United States District Court for the District of New Jersey, pursuant to these Civil Action Numbers and this Consent Decree. These notices shall be filed within 10 days of EPA's approval of the notices.

b. At least 60 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold

interests, and mortgage interests, the Settling Defendants conveying the interest shall give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of this Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants shall exercise best efforts to ensure that future owners of the Site comply with the obligations to provide or secure access pursuant to this Section. In no event shall the conveyance of an interest in property that is located at the Site release or otherwise affect the liability of the Settling Defendants to comply with all provisions of this Consent Decree.

22. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

23. The Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree or the Original Consent Decree. The Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning activities at the Site or the implementation of this Consent Decree or the Original Consent Decree.

24. a. The Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the United States under this Consent Decree to the extent permitted by and in accordance

with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified the Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to the Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

25. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydro geologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RETENTION OF RECORDS

26. Until 10 years after the Settling Defendants' receipt of EPA's Certification of Completion of the Work, as set forth more particularly in the Original Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to activities at the Site or the implementation of this Consent Decree or the Original Consent Decree or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate or other retention policy to the contrary.

27. Should Settling Defendants intend to discard or destroy any such records or documents following expiration of this 10-year document retention period, Settling Defendants shall give the United States at least 90 days notice before undertaking either such action. Upon request of the United States during this notice period, the Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Decree or the Original Consent Decree shall be withheld on the grounds that they are privileged.

28. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydro geologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

29. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. Written notice undertaken as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States and EPA:

Chief, New Jersey Superfund Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 19th Floor
New York, NY 10007-1866

Attention: Pamela Baxter, Superfund Site Remedial Project
Manager

Chief, New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Attention: Damaris Cristiano, Superfund Site Attorney

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-2-470

As to the Settling Defendants:

Mary Woytisek and Dennis M. Ringlieb
1305 Foxfield Road
Waxhaw, North Carolina 28173

David Lawrence, Esq.
Durkin & Durkin
1120 Bloomfield Avenue
P.O. Box 1289
West Caldwell, New Jersey 07007-9452

XIII. EFFECTIVE DATE

31. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XIV. RETENTION OF JURISDICTION

32. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance

of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XV. APPENDICES

33. The following Appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Original Consent Decree, without attachments.

"Appendix B" is the Site Map.

XVI. MODIFICATION

34. The Parties' obligations under this Consent Decree may be modified by written agreement of the United States and the Settling Defendants.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

36. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

37. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

38. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of this Consent Decree.

39. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS


28th DAY OF Monday, 1999



United States District Judge

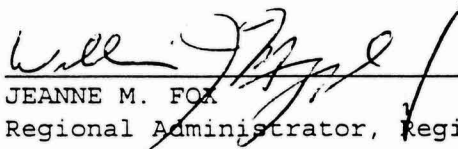
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. CDMG Realty Co., et al., relating to the Sharkey Farms Landfill Superfund Site.

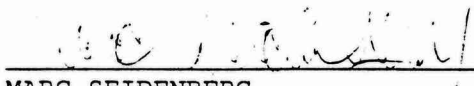
FOR THE UNITED STATES OF AMERICA

Date: 11/23/48


LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
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U.S. Department of Justice
Washington, D.C. 20530


JOSEPH HURLEY
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New York, NY 10007-1866


MARC SEIDENBERG
Assistant Regional Counsel, Region II
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. CDMG Realty Co., et al., relating to the Sharkey Farms Landfill Superfund Site.

For CDMG Realty Co.

Date: 9/21/98 Mary Ringlieb Woychsek
Name:
Title:
Address:
(Please Type)

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David D.F. Lawrence
Title: Attorney
Address: 1620 Blountville Ave
W218 Caldwell, TN 37021
Tel. Number: 973-244-4464
(Please Type)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. CDMG Realty Co., et al, relating to the Sharkey Farms Landfill Superfund Site.

For the Estate of Helen E. Ringlieb

Date: 9/21/98

Mary Ringlieb Wytisk

Name:

Title:

Address:

(Please Type)

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

David D.F. Lawrence

Title:

Attorney

Address:

1020 Bloomfield Ave
West Caldwell, N.J.

Tel. Number:

973-244-9169

(Please Type)

